

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----x

4 NICHOLAS PIMENTAL, a/k/a AASIR AZZARMI,

5 Plaintiff,

6 versus

17 CV 5317 (AMD)

7 DELTA AIRLINES, INC., TANYA MORGAN,
8 individually, SERGEY YEREMEYEV,
9 individually,

10 Defendants.

U.S. Courthouse
Brooklyn, New York

11 -----x

12 NICHOLAS PIMENTAL, a/k/a AASIR AZZARMI,
13 individually and on behalf of all other
14 persons similarly situated,

15 Plaintiffs,

18 CV 2999 (AMD)

16 versus

17 DELTA AIRLINES, INC. and any other
18 related entities,

19 Defendants.

U.S. Courthouse
Brooklyn, New York

20 -----x

February 7, 2019
1:00 p.m.

21 Transcript of Civil Cause for Status Conference

22 Before: HONORABLE ANN M. DONNELLY,
23 District Court Judge

24 APPEARANCES

25 Pro Se Plaintiff:
NICHOLAS PIMENTAL

MICHELE NARDONE, CSR -- Official Court Reporter

1 Appearances (continuing):

2 Attorney for Defendant:
MORGAN, LEWIS & BOCKIUS, LLP
3 101 Park Avenue
New York, New York 10178
4 BY: BRENDAN T. KILLEEN, ESQ.
HANNA E. MARTIN, ESQ.

5 Official Court Reporter:
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8 Proceedings recorded by mechanical stenography. Transcript
9 produced by computer-aided transcription.

1 (In open court.)

2 THE CLERK: All rise.

3 THE COURT: Everybody can have a seat.

4 THE CLERK: This is civil cause for a status
5 conference, docket number 17 CV 5317 and 18 CV 2999, Pimental
6 versus Delta Airlines, Inc.

7 Counsel, parties, state your appearance, plaintiff
8 first.

9 MR. PIMENTAL: Aasir Azzarmi, present.

10 MR. KILLEEN: Brendan Killeen and Hanna Martin, from
11 Morgan, Lewis & Bockius, on behalf of the defendant.

12 THE COURT: A couple of things. Our court reporter is
13 taking down everything that everybody says. If you talk too
14 fast or interrupt, then it makes her job harder. So I'm going
15 to ask everybody to keep that in mind.

16 We are going to talk about both of these cases
17 together. I'm just going to run through what I think is
18 outstanding in some of these matters.

19 A couple of just housekeeping things. You know, we
20 have you as Mr. Pimental. Is it okay if I call you that?

21 MR. PIMENTAL: Sure, of course; and I think maybe if
22 there was ever a trial, some of my coworkers would probably
23 know me as Pimental. So that would probably be better for
24 corporate.

25 THE COURT: Okay. Do me a favor. Pull the microphone

1 a little bit closer to you.

2 So if that's okay, that's what we will call you.

3 Your mail keeps getting returned. I know there is
4 something recently that was filed. Do we have that
5 straightened out now?

6 MR. PIMENTAL: Actually, I have to go to the post
7 office after this because what I think it is is that perhaps
8 the court is sending it under Pimental, and that's not where
9 it's maybe logged. I don't know why they are not depositing it
10 in my box; but I will find out today, and I will bring the
11 results in to the clerk's office because I think that people
12 think that I never paid for this post office box.

13 THE COURT: Just let us know, because I want to make
14 sure that you are getting whatever is being sent to you. Okay.

15 So a couple of things. I have lost count of how many
16 motions you have filed, Mr. Pimental, and I am very interested
17 in both of your claims. If you keep filing long, long things,
18 it distracts from me being able to focus on the essence of your
19 claim. I know most of this stems from the fact that you aren't
20 a lawyer; and, believe me, having been through law school, it's
21 not easy to keep up with all of these things.

22 I'm just going to go through a couple of things that
23 might make this a bit easier for everybody. The other thing,
24 though, at the outset, you have to stop insulting Judge
25 Orenstein. He is not going to get off the case. He is an

1 excellent judge, and he is paying careful, careful attention to
2 your case. So, you know, we can't all be thrilled, you know,
3 you are probably not going to get rid of me either. So, you
4 know, into each life a little rain must fall; but you are stuck
5 with me, and you are lucky to have Judge Orenstein. He is a
6 very smart person and he is giving very careful attention to
7 all of your concerns.

8 So, but you just have to -- I'm not going to pay any
9 attention to it. It's just really, really not appropriate. So
10 that has to stop.

11 If you file something that has some sensitive stuff in
12 it -- you know, there are some images there with some bad
13 language, things that discuss sexual matters and things like
14 that -- you have to let us know that that should be filed under
15 seal, because there are privacy interests of concern here. So,
16 please, if that's going to happen, just let us know it should
17 be under seal.

18 Then, finally, I don't know if you are aware that each
19 one of the judges here has individual practices and rules. All
20 right.

21 Do you have a copy of mine?

22 MR. PIMENTAL: Uh-huh.

23 THE COURT: Okay. So they are mostly just to help me
24 so I can keep track of everything that's happening. I have
25 page limitations on motions, and you can't fax things to

1 chambers unless you get permission to do it. That's not to be
2 difficult or bossy or anything like that. Those rules make --
3 you know, I have a lot of cases, and those rules make sure that
4 I can handle those cases efficiently.

5 So what I'm going to do now is just go through some of
6 these motions that have been filed; and, if I'm forgetting
7 some, I think you will let me know.

8 There are a number of motions for judicial notice.
9 There are at least nine of them. So the thing about judicial
10 notice, a lot of times you are asking me to take judicial
11 notice of cases and things like that. You don't have to do
12 that. When you file whatever substantive motions you file,
13 which will be filed at the appropriate time, you can just cite
14 the cases in your brief. You don't have to -- that's not what
15 judicial notice is for.

16 Judicial notice is for things like if you are in a
17 trial and somebody wants you to take judicial notice that on
18 January 1 the temperature was, you know, 30 degrees. That's
19 what judicial notice is. Citing cases, which is something that
20 everybody does when they file a kind of a brief or something,
21 you don't have to ask me to take judicial notice of that.

22 Just when we get to the point where we are doing
23 motions, summary judgment, when you file your brief, you can
24 just cite the cases; and therein I will surely read them.

25 So those motions for judicial notice I'm denying, just

1 because they don't mean anything on their own.

2 Now, you also ask that I transfer this case to the
3 Southern District. The first question I have is -- you say you
4 have a lawyer that will represent you in the Southern District
5 but not here -- why can't that person represent you here?

6 MR. PIMENTAL: I'm not sure, but he said he is
7 registered in SDNY; and when I asked him, well, I'm EDNY, he
8 told me to come there. I don't know if at one point I did see
9 a sign in the clerk's office and it said maybe at the time or
10 something, it was October, there was -- they weren't taking
11 applications or something. I don't know.

12 THE COURT: Well, I mean, I'm not a hundred percent
13 sure what the lawyer's concerns are, but even if you are not
14 admitted here, if you are admitted to practice in the Southern
15 District, you can ask to get admitted here. It's called
16 pro hac vice, and you file an application; and I'm sure the
17 lawyer knows this. All the lawyer would have to do is file
18 this application that shows that they are a lawyer in good
19 standing in some other place.

20 So because, otherwise, there is really no reason to
21 switch the case. The main reason, really, for you, is that I
22 have had the case for a while. I'm pretty familiar with it.
23 And Judge Orenstein has had it for a while. If this were to
24 get switched to another judge, they would have to start all
25 over from ground zero; and it would take that much longer for

1 your case to get resolved, for your two cases to get resolved.
2 So I'm going to deny the motion to change venue.

3 But I encourage you to speak to the lawyer about
4 whether or not he would, he or she, would be willing to appear
5 pro hac vice here or whatever the issue is.

6 Have you spoken to that lawyer recently?

7 MR. PIMENTAL: No. He told me to call him when I get
8 the change of motion, change of venue motion approved.

9 But, Your Honor, what I'm trying to say is, of course
10 there are other factors that I'm sure maybe I probably
11 mentioned; and it's not me that's judge shopping, but lawyers,
12 when you already have certain judges assigned, sometimes they
13 don't like their individual practice rules. And so, you know,
14 when it's -- they -- when you are already in the situation,
15 they can pick things, what they like, what they don't like.

16 THE COURT: But they don't have any control over who
17 gets the case. So, I mean, Judge Weinstein asked me to take
18 your other case because it's connected. So I agreed to do that
19 for Judge Weinstein.

20 But when you file a case here, it goes into a wheel,
21 and it just gets assigned to a district judge and to a
22 magistrate judge. That's just how it works. We have too many
23 cases to try to pick and choose. So we don't do it, but a
24 litigant surely could never engineer it so that they get their
25 case assigned; and I don't think these folks would have picked

1 me anyway. We don't know each other.

2 So, anyway, so I mean I hate to give you the bad news.
3 I know you said in one of your submissions you really like
4 Judge Block, but he is not available. So you are stuck with
5 me. He is a good judge, but you are stuck with me. I'm sorry
6 about that. So we are not going to -- we won't be changing
7 venue. All right.

8 Now, there is another motion that you filed -- and
9 just forgive me for this; I'm really just trying to keep myself
10 organized -- that you wanted me to deem -- it was about your
11 56.1 statement that you submitted. Because I denied your
12 summary judgment motion without prejudice, just because we are
13 not at that stage of the proceedings where it's appropriate.
14 So they don't have to answer your 56.1 statement yet. So that
15 motion is also denied.

16 I think -- I get the feeling that you understand the
17 issue with the summary judgment. Just the way the rules work,
18 we don't -- a summary judgment motion is not decided until all
19 of the discovery is done, and the reason for that is that the
20 standard in summary judgment is that you can only grant the
21 motion if the two of you don't have any factual disputes about
22 something. Since you haven't finished finding out what the
23 facts are, you can't do it yet. So it's a waste of your time.
24 So that's why.

25 It's not because I don't want to consider it. It's

1 just that it's just not time to do that. So all of those
2 things with respect to summary judgment, we are just not there
3 yet. So anything having to do with the summary judgment, it's
4 just premature.

5 I think we already talked a little bit about Judge
6 Orenstein. You know, you are awfully hard on him, but he
7 really has been giving careful, as I said, really careful
8 consideration to your case; and so, you know, I'm not going to
9 review his orders. He is smarter than I am. So I'm not
10 reviewing any of his discovery orders. They are all correct.

11 He did ask you to prepare a narrative statement. You
12 have to do that. That is something that we do in pro se cases
13 because sometimes, as I'm sure you have experienced, because
14 you are not a lawyer, it gives the judge a better chance of --
15 a better understanding of what it is you are actually claiming.
16 Sometimes you may think your claim falls under one type of law,
17 but a judge will look at it and -- what we do when people file
18 pro se submissions is that we give it the most liberal
19 interpretation possible.

20 So if you are claiming that something happened and I
21 look at it and I think, wow, that doesn't really seem like it's
22 under this statute, it seems more appropriate under this
23 statute, I will construe that just generously to think that's
24 what you mean. This is a help for you. That's why we do that
25 in pro se cases. I'm not trying to make your life difficult.

1 Now, it's true -- you know, and any lawyer will tell
2 you this -- that sometimes the judge is going to agree with
3 you, sometimes the judge is not going to agree with you. We
4 just do our best to interpret the law as we understand it. It
5 doesn't mean that, you know, we have something personal against
6 you or anything like that. Not at all.

7 I mean, we are very accustomed to having people here
8 represent themselves; and I know that it's not easy for
9 somebody who is not a lawyer to find his way through what can
10 be a pretty complicated situation.

11 So I have sort of spoken generally about your case. I
12 was really focusing on the gender discrimination case.

13 Then, the case that Judge Weinstein had before, I
14 think you understand this, but just correct me if I'm wrong.
15 Because you are representing yourself, it can't be a class
16 action. I think it's not allowed. I think I -- in one of your
17 submissions, I recognized that you understood that; and so it
18 can't be a class action.

19 The person who you consulted about representing you on
20 the other case, would that person also be willing to represent
21 you on the case, the New York Labor Law case, the overtime
22 case? Do you think that person would represent you on both
23 cases?

24 MR. PIMENTAL: No, Your Honor. If I could have 30
25 seconds.

1 THE COURT: Sure, but have mercy on our court
2 reporter. So just talk slowly. All right.

3 MR. PIMENTAL: Sorry. I'm working with the airlines
4 and in New York we talk fast.

5 Basically a lot of time the class actions lawyers are
6 different from the employment discrimination lawyers, and that
7 was maybe one of the issues with my first lawyers. They never
8 did class actions.

9 THE COURT: Right.

10 MR. PIMENTAL: They were forcing me to settle,
11 because, of course, it was advantageous for them to get a part
12 of that settlement; but I didn't want to abandon the class, and
13 I still don't want to abandon the class, which is why I need a
14 lawyer. So, Your Honor, I don't want -- because it's not just
15 about me because these issues are still going on, which is why
16 I asked for the permanent injunction or temporary, whatever the
17 court is willing to provide.

18 So, Your Honor, what I'm asking, maybe because it's
19 not about me. I mean, I could have taken the \$5,000. I didn't
20 want to do that because I don't want to abandon my colleagues,
21 who I promised I was going to try to do this for a lot of
22 people.

23 THE COURT: Right.

24 MR. PIMENTAL: So if you say something, you have to be
25 strong in your convictions and try to do that. So I think I

1 would -- now that it got reassigned, it's not so easy for me to
2 find a lawyer. But I still would like to try to do that
3 because I don't want to abandon the class again still.

4 THE COURT: So I know you have had kind of a breakdown
5 in the relationship -- you had two lawyers on this before,
6 right, or am I mixing up my cases?

7 MR. PIMENTAL: On the class action?

8 THE COURT: Yes.

9 MR. PIMENTAL: Yeah, because the first ones, they
10 never did class actions. They only started it because they
11 wanted like a quick settlement. So it was just like when I
12 didn't settle, there was some tension there, whatever, and we
13 parted ways. And so I had to find -- they wanted me to find a
14 new class action lawyer anyway, because they weren't
15 experienced with that, if it was to go forward.

16 So I did have another lawyer after that. Once again,
17 when I didn't settle because I didn't want to abandon the
18 class, there was more problems, which is where I'm at now; and
19 now I want to get a lawyer to represent the class.

20 THE COURT: All right. So you are still working on
21 that?

22 MR. PIMENTAL: Well, I think --

23 THE COURT: You want me to appoint one? Because we
24 can't do that.

25 MR. PIMENTAL: I would love that.

1 THE COURT: I know, but that's not the way it works.

2 MR. PIMENTAL: I understand, Your Honor; but is it
3 possible -- I think Magistrate Levy, who I never met, and I
4 never met Judge Weinstein, and because my lawyer showed up
5 because so I never met them or disliked them, because I never
6 met them.

7 THE COURT: They are both wonderful.

8 MR. PIMENTAL: I will take your word for it.

9 When I found out I was abandoned because I settled,
10 because like PACER, when something happens, I don't get an
11 e-mail because I was never pro se. So I didn't know what was
12 going on.

13 So when I found out from the pro se lawyer and the
14 office here at EDNY that this was happening, I went to the
15 clerk's office. I wrote a letter asking Magistrate Levy, who
16 was very kind and gave me until the 15th of this month to find
17 a lawyer.

18 THE COURT: Right.

19 MR. PIMENTAL: Since that time is expiring and I
20 didn't know it got reassigned to a different judge, and then
21 the lawyer that was interested told me he is not interested,
22 and now here we are.

23 THE COURT: I will give you some more time, if that's
24 what you want.

25 MR. PIMENTAL: Okay.

1 THE COURT: I think -- I can't remember exactly how
2 this happened, but, you know, if Judge Weinstein asks me to do
3 something on a case I almost always say yes. So I think he saw
4 that we had this and that we should handle both of them. It
5 does make some sense, because it's the same lawyers on the
6 other side, and it involves some of the same group of people.
7 So if Judge Weinstein asked me to do him a favor on a case, I
8 will definitely do it.

9 You know, I'm not as smart as he is, but I care about
10 your case. So that should be fine. So let's give you --
11 that's one thing we can get done today. Why don't we give
12 you -- you want to say until the middle of March, to try to
13 find a lawyer?

14 MR. PIMENTAL: Of course. Do I have any say in that
15 matter?

16 THE COURT: If you feel like you need a little more
17 time -- you are not going to oppose that, are you?

18 MR. KILLEEN: No, Your Honor.

19 THE COURT: Okay. So do you want some more time? Do
20 you want to try the beginning of April?

21 MR. PIMENTAL: Okay. But --

22 THE COURT: The only other thing I'm going to suggest
23 to you, just having done this for a number of years here and
24 other places, you know, you can get so wrapped up in your case
25 that you can't think of anything else and that you start

1 thinking that everybody is against you and that if they don't
2 see things your way that they must be conspiring against you.

3 Sometimes people are against you, but sometimes they
4 are not; and it's possible that these lawyers that you have had
5 before are just trying to give you their best judgment. You
6 may not agree with it, but that doesn't necessarily mean that
7 somebody is trying to do something tricky to you.

8 So I would just encourage you, when you are thinking
9 about this case, to not immediately jump to the conclusion that
10 somebody is trying to cheat you. Because it's really -- at
11 least insofar as Judge Orenstein and I are concerned, we
12 wouldn't be -- we wouldn't have these jobs if that's what we
13 wanted to do. The reason you take this job is to try to -- one
14 reason, is to try to help people work out their differences.

15 So I know that you were quite adamant in rejecting the
16 settlement, but you may want to think about it, assuming that
17 it's still even on the table, for the labor law case. I'm not
18 going to ask you to tell me that now, but, you know, maybe -- I
19 don't know this case as well as your other case, but maybe the
20 lawyers, in their best legal judgment, thought, you know, this
21 is not a winner. You are their client, and they wanted to get
22 the best possible outcome for you that they could get.

23 So I just encourage you to be open to that
24 possibility, that sometimes even though we feel very strongly
25 about our positions and about, you know, feeling that someone

1 has wronged us, sometimes what an objective person, who is your
2 lawyer, can help you figure out is whether maybe you have been
3 looking at it the right way. I'm not making any judgment about
4 that one way or the other, but I would just encourage you to
5 think about that a little bit.

6 So how about April -- what's the first week in April?

7 THE CLERK: 3rd.

8 THE COURT: April 3rd, and if for some reason you feel
9 like you are getting close and you haven't gotten anybody by
10 then, you just let me know, and we will see if you need some
11 extra time. Does that sound good?

12 MR. PIMENTAL: Can I ask a question?

13 THE COURT: Sure.

14 MR. PIMENTAL: Because I don't know how this works,
15 especially with the class action lawsuit. You know, I gave you
16 some information because I didn't know what you knew and what
17 you didn't know; and, you know, I don't have access to that
18 like PACER case and I don't know if my lawyers told, I guess,
19 Judge Weinstein or Judge Levy, I don't know if they mentioned
20 that either, because I gave you the information, I guess would
21 you be able to do -- to say that this doesn't have merit and I
22 shouldn't even waste my time trying to find a lawyer, or how
23 does that work?

24 THE COURT: So I know what you are asking. You know,
25 we really can't do that. We can't give you legal advice.

1 Sometimes we have, you know, premotion conferences
2 here. I don't generally do it with people who are representing
3 themselves, but we have premotion conferences because, say, the
4 lawyers on the other side will submit -- they say they want to
5 make a motion; and sometimes I will give them what my
6 preliminary sense is, just so they can decide whether or not
7 they want to use their time by making that motion.

8 So but I can't give you legal advice, and I know
9 that's difficult for people. I mean, I think you can check
10 with the pro se office. I think you seem to know them pretty
11 well. Right?

12 MR. PIMENTAL: You know, it's funny, they are very
13 nice. The lawyer, she is great and has a dog down there,
14 really cute. It's her service animal. You can play with it, a
15 nice environment; and they are always helpful. They will
16 answer your questions, even in an e-mail, but like they don't
17 represent you. So it's a fine line. You can ask questions,
18 but it's not like they are going to be your lawyer or anything
19 like that.

20 So, Your Honor, I think the thing I was trying to
21 figure out was if, let's say, I can't find a lawyer, the way I
22 was reading some of the -- what was it, Supreme Court of
23 New York -- am I allowed to go to arbitration for this, whether
24 I'm by myself representing the class, or to get a lawyer for
25 the day to represent me in arbitration? Is that an option?

1 THE COURT: Well, I don't think there is an
2 enforceable arbitration clause in the contract. Is there?

3 MR. KILLEEN: There is not, Your Honor.

4 THE COURT: See, that's the problem. Arbitration, you
5 can only get arbitration if there is some clause in a contract
6 that forces Delta to go to arbitration. So, I don't think
7 that's a possibility in this case.

8 You know, my recollection of this case was that
9 Delta's position was that you can't assert an overtime claim
10 under the New York Labor Law because you are what's called an
11 exempt employee under the Fair Labor Standards Act, which would
12 only entitle you to get that one-and-a-half times the minimum
13 wage overtime rate, which -- correct me if I'm wrong -- I think
14 you received. Also, because you earned more than New York's
15 minimum wage, you wouldn't be entitled to spread your hours of
16 pay. I believe that's what the defense's position is.

17 But I don't want to -- do I have that about right?

18 MR. KILLEEN: You do, Your Honor.

19 THE COURT: Okay. Now, whether or not that is
20 meritorious, I haven't looked at yet because I was waiting to
21 see if you could get a lawyer who could help you out with that.
22 But that might be a -- that's what their position is. That
23 might be a bar to your case.

24 If it is, you know, I would -- I mean, I'm not making
25 a decision about it, but those are the sorts of things that a

1 lawyer would be able to tell you, and, you know, then you may
2 realize this isn't worth your time. You have still got the
3 other case.

4 So just while I'm at it, there is something, you want
5 a preliminary injunction. I can't do any of those things in
6 this case because you don't have standing because this is not a
7 class action, and I don't think you work at Delta any more.
8 Right?

9 MR. PIMENTAL: Well, I don't. However, I do go to
10 worker's comp hearings, and they may send me back to work soon
11 so -- because there is another issue involved. So I can't say
12 that I'm going back yet.

13 THE COURT: Okay. But it's not a class action and so
14 that's -- I can't grant that motion.

15 So I think what we will do is just -- bottom line
16 here -- I think the next thing for us to do is to figure out
17 what's -- I'm going to ask defense counsel -- what's -- I know
18 I should know the answer to this, but I have gotten myself --
19 is there anything outstanding?

20 Are there any motions? I know there is the proposed
21 motion to dismiss on the labor law case. Discovery is not
22 done?

23 MR. KILLEEN: No. So, Your Honor, the motion to
24 dismiss in the wage-and-hour case is fully briefed.

25 THE COURT: Right.

1 MR. KILLEEN: Judge Weinstein at one point had
2 directed the parties to --

3 THE COURT: Convert it to a summary judgment?

4 MR. KILLEEN: -- convert it to a summary judgment.

5 THE COURT: I'm not sure that I'm going to take that
6 same approach, because I don't think we have enough discovery.
7 We don't have any discovery, right?

8 MR. KILLEEN: Not in that case, Your Honor. It
9 involves a different position and different --

10 THE COURT: So I have to look at that a little more
11 closely; but, to me, I don't think that's an approach that will
12 work for me. But I think I'm just going to hold off on that
13 because I'm going to have some hope that Mr. Pimental can get
14 some -- can get a lawyer to give him some advice on that.

15 So does that work for you?

16 MR. KILLEEN: Understood, Your Honor.

17 THE COURT: Then just tell me what's left to do in
18 discovery on the other case.

19 MR. KILLEEN: Your Honor, can I address one other
20 thing with the wage and hour, so we can close out wage and
21 hour?

22 THE COURT: Yes.

23 MR. KILLEEN: We had filed -- and I think you alluded
24 to it earlier, at least in terms of certain documents -- but
25 the proposed confidential settlement agreement has been

1 attached to -- and I forget which case. It's been attached
2 twice now as an exhibit, but we filed a request to seal that
3 document.

4 THE COURT: That will be sealed, yes.

5 MR. KILLEEN: My apologies. I forget the exact docket
6 number, but it also, in a filing yesterday, appeared as
7 Exhibit 1 in another filing.

8 THE COURT: Is that from Mr. Pimental?

9 MR. KILLEEN: Correct.

10 THE COURT: So can you not do that anymore, file that?
11 It's not necessary to keep doing it.

12 MR. PIMENTAL: I'm sorry. File what exactly?

13 THE COURT: The confidential settlement.

14 MR. PIMENTAL: Oh, well, don't you usually have to
15 give it to the court, whether you signed it or not?

16 THE COURT: I think you have now given it to me about
17 16 times. So you don't have to do it anymore.

18 MR. PIMENTAL: Sure.

19 THE COURT: All right. Okay. So that's sealed.

20 MR. KILLEEN: Yes, and I think the wage and hour --

21 THE COURT: I think we are done with that one.

22 MR. KILLEEN: Yes.

23 THE COURT: Then there is discovery still to be done
24 on this other case. Have you done your deposition yet?

25 MR. PIMENTAL: No, Your Honor, but can I just ask one

1 question about the wage and hour?

2 THE COURT: Sure.

3 MR. PIMENTAL: Okay. So my question is: Is it
4 possible to go to mediation for that, or how would you initiate
5 that?

6 THE COURT: Do you want to?

7 MR. KILLEEN: You would ask us if we want to engage in
8 mediation. I would represent at this time I don't think my
9 client is willing to, but I can raise that after this
10 conference.

11 THE COURT: Yes. They have got to talk to their
12 client too. All right. So that's something that you will talk
13 to each other about.

14 Did you have your deposition yet?

15 MR. PIMENTAL: No, Your Honor. Can I just ask a
16 follow-up, because it was something still in the same spirit of
17 that question.

18 THE COURT: Sure.

19 MR. PIMENTAL: So I guess the mediation thing, when I
20 would get a lawyer, they would probably engage with them and
21 try to work that out. That would be possible.

22 My question is now: Originally this originated in
23 state court. So let's say I can't find a lawyer or let's say
24 whatever the case would be, and it would just be my claim.

25 Can this court send that back to state court?

1 THE COURT: Why is it here, diversity?

2 MR. KILLEEN: Which matter, Your Honor?

3 THE COURT: The wage and hour.

4 MR. KILLEEN: It is diversity, and alleged damages are
5 over \$75,000.

6 THE COURT: I see.

7 MR. KILLEEN: I'm sorry. It is under -- it's also
8 under CAFA.

9 THE COURT: Is it FLSA?

10 MR. KILLEEN: It is not. It is -- I'm trying to
11 remember now. Just New York Labor Law.

12 It was removed under -- with respect to the individual
13 and under CAFA. So CAFA now, depending on whether or not
14 Mr. Pimental is represented.

15 THE COURT: But if it were just him?

16 MR. KILLEEN: I believe the way the claims are
17 written, it's still over \$75,000, Your Honor.

18 THE COURT: All right. The other thing, you know, if
19 it gets sent back to state court you are just starting all over
20 again. I don't know why you would want to do that.

21 MR. PIMENTAL: Do you want an answer?

22 THE COURT: Not really, because I think you are going
23 to say something unflattering. Okay.

24 So we have Mr. Pimental's deposition to still do.
25 What else do we still have to do, discoverywise?

1 MR. KILLEEN: So, Your Honor, under Judge Orenstein's
2 order, Mr. Pimental had until Monday to provide the narrative,
3 identify which out of the 1200-plus RFAs he wanted us to
4 respond to, which outstanding discovery requests he felt that
5 our prior responses to were deficient, what additional
6 documents he would want, and identify witnesses that would
7 support his narrative.

8 THE COURT: By this past Monday or coming Monday?

9 MR. KILLEEN: February 4.

10 THE COURT: Okay.

11 MR. KILLEEN: It's our position -- and I believe we
12 still need to go through Judge Orenstein for this -- but that
13 Mr. Pimental has not complied with that.

14 THE COURT: Are you scheduled to see Judge Orenstein
15 again at any time soon?

16 MR. KILLEEN: The status conference is scheduled in
17 March, after -- so we were supposed to receive all that by
18 February 4. By March 6 we are supposed to respond.

19 THE COURT: So just if Mr. Pimental were to give that
20 to you next week, would that be acceptable?

21 MR. KILLEEN: Yes, Your Honor.

22 THE COURT: Okay. So can you do that, please? You
23 are going to give your narrative, and then whatever else Judge
24 Orenstein wanted you to do. I will call him to let him know
25 that I extended the deadline.

1 Shall we make it next Friday?

2 MR. KILLEEN: That's fine, Your Honor.

3 THE COURT: Okay. You can do that. Okay. So what's
4 the date of that?

5 THE CLERK: The 15th.

6 THE COURT: So by February 15 you are going to provide
7 the narrative; and let's just make the record crystal clear so
8 I remember, and so it's clear to Mr. Pimental. It's going to
9 be his narrative, and he has a number of things that he feels
10 were insufficiently answered. Correct?

11 MR. KILLEEN: Yes, Your Honor. It's Docket 97, for
12 reference purposes.

13 THE COURT: Okay. So and, you know, just for
14 everybody's -- so everybody can keep it straight, it doesn't
15 have to be 500 pages long. It should be, you know, you want to
16 get your point across, and you don't have to -- I know you have
17 strong feelings about things; but rather than, you know, saying
18 mean things about the other side, just tell them what you think
19 is inappropriate, and that enables them to figure out if they
20 can supplement whatever they have given or to say we disagree
21 with you. So that, so February 15 for that.

22 So the dates that we have fixed right now, at least as
23 far as I'm concerned, you are going to, by that April 3rd date,
24 you are going to let us know about your progress with getting a
25 lawyer. I suppose you are going to speak to the lawyer that

1 only wanted to go to the Southern District, about coming here.
2 It's not that far, you know. So it's really right across the
3 river.

4 So if he is not admitted, there are steps that -- or
5 she; I don't even know if the person is male or female -- but
6 you will let us know by April 3rd. If it comes before that,
7 that's even better; you will just post a letter.

8 You are going to take care of the address issue so I
9 can make sure that you get everything that you are supposed to
10 get.

11 Is there anything else from your side that we need to
12 do?

13 MR. KILLEEN: To that end, Your Honor, we have
14 e-mailed Mr. Pimental our production as well as his own
15 production numerous times. We have yet to get a notification.
16 The way our secure file transfer works, we get a notification
17 when someone downloads those documents. They haven't
18 downloaded yet; and, like the court, all of our mailings to
19 Mr. Pimental have been returned undeliverable.

20 THE COURT: Have you gotten their e-mails,
21 Mr. Pimental?

22 MR. PIMENTAL: I have.

23 THE COURT: Have you -- they have to know that you
24 have gotten it. So have you down -- so I mean, I'm the least
25 technologically advanced person that there is. So just -- I

1 think they are sending it to you so you can have it.

2 When you say "download," do you mean he can still look
3 at it on his computer?

4 MR. KILLEEN: Yes, Your Honor. It's just because of
5 the size, at the last conference we said we would provide him
6 his own production because he said his past attorney hadn't
7 handed over the files.

8 THE COURT: I see. So you have got all that?

9 MR. PIMENTAL: Yes, and I downloaded it. I don't know
10 why it doesn't show it was downloaded.

11 THE COURT: But now we have established that you have.
12 So that's good. So that's progress.

13 MR. KILLEEN: Because that's supposed to facilitate
14 the meet-and-confer process under the order from Judge
15 Orenstein.

16 THE COURT: It just makes everything easier. All
17 right. So I think we have made some good progress here.

18 And let's finish the discovery so we can move on to
19 the dispositive motion stage. If you still feel that after
20 discovery is done you want to file a motion for summary
21 judgment, you will do that, following my individual rules. I
22 have a page limit and all of that. But we will keep moving
23 forward, and -- have I given you any -- every opportunity you
24 need to say something?

25 MR. KILLEEN: There are two, I think, open items.

1 Like you, Your Honor, I have the list of --

2 THE COURT: That's okay.

3 MR. KILLEEN: One, I understand Mr. Pimental filed a
4 motion to compel in this case, for a privilege log.

5 THE COURT: Oh, I forgot about that.

6 MR. KILLEEN: We are putting that together.

7 THE COURT: Great.

8 MR. KILLEEN: Mr. Pimental also served us with a
9 subpoena for the documents that he believes he should receive
10 through the -- I think that was his attempt at complying with
11 the order.

12 THE COURT: Don't do that. No subpoenas. They will
13 follow the discovery order; and, if there is a problem with
14 that, you take it up with Judge Orenstein. I don't think we
15 need to be -- I don't think it's a proper use of the subpoena.

16 MR. KILLEEN: We didn't either, that's why I wanted to
17 present it here.

18 As part of that subpoena, he also asked permission to
19 appear on Delta's premises in, I believe, human resources, on
20 February 15, which we would object to as well.

21 THE COURT: Yes. I don't know anything about that.
22 That's really not the proper subject of a subpoena.

23 Is there some reason why he can't go to Delta's human
24 resources? I'm not familiar.

25 MR. KILLEEN: To obtain the documents produced in this

1 case.

2 THE COURT: Oh, I see. I see.

3 No, no, no. You can't do that because Delta is
4 represented by a lawyer. That's who you work through. Okay?
5 That's how that works. That's why they retain a lawyer, so the
6 lawyer can handle all of that. Okay. Good?

7 MR. KILLEEN: I have, I think, two more, Your Honor.

8 THE COURT: That's okay.

9 MR. KILLEEN: Amongst the motions for reconsideration
10 and everything else, were, I believe, still motions to deem
11 RFAs admitted. Again, they should be covered by the prior
12 order. I just want to make clear, because there have been
13 motions to compel again, that we are not required to respond to
14 those RFAs.

15 THE COURT: No.

16 MR. KILLEEN: Okay. Now I have two more.

17 THE COURT: Okay.

18 MR. KILLEEN: In communications with us, including
19 this morning, Mr. Pimental has copied a Ms. Erica Lee. I
20 believe she is either a current or former flight attendant, who
21 has provided him with a declaration in this case.

22 I just want to make clear, if he copies her, that's
23 fine. We are not going to respond to include Ms. Lee.

24 THE COURT: That's okay. That's fine.

25 MR. KILLEEN: Finally, based on the conference and how

1 it's gone -- I anticipate what Your Honor will say -- we have
2 been anticipating, in light of Mr. Pimental's disregard for the
3 prior orders, a Rule 41(b) motion.

4 In light of the fact that he now has until next Friday
5 to try to comply with that discovery order, we will hold off on
6 any such motion.

7 THE COURT: I think so. I think we all understand
8 each other pretty well here. Really, just try to -- you've got
9 to play along with -- you have to follow the rules, which are
10 not meant to make things harder for you. They are meant to
11 make things move more efficiently, and that's just the way it
12 works.

13 It's the hard thing about representing yourself. I
14 mean, it's a little bit like having to perform surgery without
15 a medical degree, and it's hard.

16 But you have got to follow the rules. We make
17 everybody follow the rules, and there are good reasons for
18 them. So you really must do that.

19 I like to tell people who come into my courtroom, this
20 is a drama-free zone. It's -- I attribute to everybody the
21 best intentions, and I -- but in return I expect people to
22 comply with these rules, which are designed to make the
23 litigation flow efficiently.

24 So I'm not concerned about that. I think Mr. Pimental
25 understands me very well.

1 So I think we are done. Yes?

2 MR. PIMENTAL: Your Honor, okay. What I have been
3 trying to address with Judge Orenstein and I guess now with
4 Your Honor, they are very nice when we are here, so very
5 professional, nice; but I'm not saying it's them, because it's
6 probably the client. All right.

7 In the past -- maybe there was one e-mail recently
8 after Judge Orenstein's January 4 hearing -- but they were not
9 answering any of my e-mails after I was without a lawyer. They
10 do not communicate. They do not send documents.

11 So because they are being very recalcitrant and not
12 cooperating with the process, this is why there have been
13 problems and I have had to file motions. I --

14 THE COURT: What is it that you want that you don't
15 have?

16 MR. PIMENTAL: Everything. This is why we are where
17 we are.

18 THE COURT: Well, see, I have now, you know, I have
19 read some of the e-mails that you sent. I mean, there is a
20 saying that you get more flies with honey than with vinegar;
21 and they are not -- you know, and I mean this in the nicest
22 possible way -- but you are not always correct about the legal
23 premise that you assert.

24 So, as I said before, I'm not always going to agree
25 with you, and Judge Orenstein is not always going to agree with

1 you; and that's just a fact of life in litigation. So, for
2 example, they sent you your previous production that you said
3 you didn't get from your lawyer, as well as their discovery.
4 They have to know that you got it. So now they do.

5 So I'm just telling you to back it down a little bit.
6 You don't have to -- not every -- I'm sure you have other
7 things to do; and so but when you file something that's 700
8 pages long, I'm not going to read it, because it's not -- I
9 mean, I have read a lot of the things that you have submitted,
10 but no judge is going to read that.

11 So I mean I'm glad we had the chance to talk about
12 these things, but what I said before I'm quite serious about.
13 Not everything that happens in a case is meant to, you know,
14 meant to be unfair to you or anything like that. I'm concerned
15 about your case. I want -- but I want it to proceed in an
16 orderly fashion, and the only way we can do that is by adhering
17 to the rules.

18 I'm sure that you are going to do that. I'm going
19 to -- I will give you that -- you have that February 15 date.
20 You have got -- your mission is to file your narrative and to
21 let them know clearly and succinctly what it is that you feel
22 is lacking in whatever they have given you before. That's your
23 job before February 15.

24 Then we have to take care of the rest of discovery,
25 and then we will talk about setting a schedule for if there are

1 dispositive motions. What I mean by that, if there are summary
2 judgment on either side.

3 Now, I do have another matter that I have to attend
4 to. So I think we have -- I think we are pretty clear. I feel
5 clear. So the job for you before the 15th is to file that
6 narrative, let them know what else you want; and I think we are
7 good. Okay?

8 MR. PIMENTAL: One last question, Your Honor?

9 THE COURT: Surely.

10 MR. PIMENTAL: So I went to the pro se office here
11 at EDNY, but there is no template to do a narrative. So
12 nobody knows because it's not typical. So I don't even know
13 what to do.

14 THE COURT: All you -- I mean, I don't generally do
15 discovery, so, but it's just a -- like telling a story about
16 what are the facts underlying your claim. I will tell you
17 this, you are good at writing things. So if you were telling
18 somebody this story of what happened to you, I think that's
19 what Judge Orenstein wants.

20 Does that sounds right to you?

21 MR. KILLEEN: Yes. And, Mr. Pimental, I will give you
22 a copy of the order too.

23 THE COURT: Yes. Just do exactly what he says. It
24 sounds like you know better than anybody, so.

25 MR. PIMENTAL: And then one last thing is because I

1 disagree with Your Honor -- sorry -- I would like leave to do a
2 writ of mandamus.

3 THE COURT: It's not going to work. You mean you want
4 me to recuse myself or something?

5 MR. PIMENTAL: No, not you. Yeah, to get Judge
6 Orenstein to disqualify himself.

7 THE COURT: He is not going to; and, you know, you are
8 making me a little bit mad. You can't do that.

9 Just because you disagree with Judge Orenstein does
10 not mean that you can be disrespectful to him. This is a place
11 of respect. I have told you before that I don't want to hear
12 any more of those things. Judge Orenstein is a smart,
13 hard-working judge, who is doing his best to give you a fair
14 shake.

15 No more. No more. You know, I am a patient person,
16 and -- but just because you don't like him -- if we did that
17 with -- if we let people say, I don't really like this judge
18 that much, it would be chaos around here. That's not going to
19 happen. It's not worth pursuing.

20 So I hope you can accept that you are not going to win
21 that one. Well, then you are distracting yourself from the
22 merits of your case. That's a side road that is -- it's a
23 complete dead end to me.

24 So, you know, I can't make you focus on the issues;
25 but I'm telling you, in the strongest possible terms, that I

1 don't look kindly on that, and no other judge would either. So
2 that's the end of that.

3 Okay. So February 15 you are going to file what it is
4 that -- the narrative. You have got a copy of the order, and
5 then we will see what happens. All right.

6 Thanks so much.

7 MR. KILLEEN: Thank you, Your Honor.

8 (End of proceedings.)

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11 Certified to be a true and accurate transcript.
12 /s/ Michele Nardone
MICHELE NARDONE, CSR -- Official Court Reporter

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